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BECERRA; and CLEO VICTA

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 B.B., a minor by and through her
13 mother, CHELSEA BOYLE; and
CHELSEA BOYLE, an individual,

14 Plaintiff,

15 vs.

16 CAPISTRANO UNIFIED SCHOOL
17 DISTRICT, et al.

18 Defendant.

19 CASE NO. 8:23-cv-00306-DOC-ADS

20 *Assigned for All Purposes to:
Hon. David O. Carter – Courtroom 10A*

21 **DEFENDANTS' SEPARATE
STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, OR
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

22 Date: February 12, 2024
Time: 8:30 a.m.
Dept.: 10A

23 Trial Date: March 19, 2024

24 Complaint filed: February 21, 2023

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1 **TO THE COURT, PLAINTIFF, AND THEIR COUNSEL OF RECORD:**
2 **PLEASE TAKE NOTICE** that Defendants Colt Services, Colt Group, LLC,
3 Colt Services, Inc., and Colt Services, L.P. (“Defendants”) hereby submit the
4 following Statement of Uncontroverted Facts and Conclusions of Law in support of
5 their Motion for Summary Judgment, or in the Alternative, Partial Summary
6 Judgment, pursuant to L. R. 56-1:

7 **STATEMENT OF UNCONTROVERTED MATERIAL FACTS AND**
8 **CONCLUSIONS OF LAW**

9 Defendants are entitled to summary judgment pursuant to *Fed. R. Civ. P.* 56.

10 **UNCONTROVERTED MATERIAL FACTS**

SUF #/ Undisputed Fact	Evidence
#1 (Plaintiff made a drawing that stated “Black Lives Mater” and “any life”).	Deposition of Plaintiff B.B. Vol. 1, taken October 5, 2023 (“B.B. Depo Vol. 1”) at Pg. 13:4-6; Declaration of Courtney L. Hylton (“Hylton Decl.”) at ¶ 2, Ex. A
#2 (Plaintiff made the drawing on her own; she was not instructed to make the drawing by anyone).	B.B. Depo Vol. 1, 27:22-24; Hylton Decl. ¶ 2, Ex. A
#3 (Plaintiff gave the drawing to a classmate, M.C.).	B.B. Depo Vol. 1, 17:15-16; Hylton Decl. ¶ 2, Ex. A
#4 (M.C.’s mother, Cathy Clay, saw the drawing).	Deposition of Cathy Clay taken October 4, 2023 (“Clay Depo”) at Pg. 18:7-10; Hylton Decl. ¶ 4, Ex. C
#5 (Cathy Clay informed Becerra about the drawing via email).	Clay Depo 27:17-19; 93:11-14; Hylton Decl. ¶ 4, Ex. C
#6 (Clay’s email stated, “My husband	Clay Email to Becerra (CUSD 000154),

1	and I will not tolerate any more 2 messages given to our daughter at 3 school because of her skin color... As 4 the administrator we trust you know the 5 actions that need to be taken to address 6 the issue.”).	Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.
7	#7 (Becerra called Clay and Clay told 8 him the drawing came from Plaintiff 9 and Becerra said he would investigate).	Clay Depo, 35:25-36:7; Hylton Decl. ¶ 3, Ex. C
10	#8 (Plaintiff told Becerra she drew the 11 drawing).	B.B. Depo Vol. 1, 20:20-25; Hylton Decl. ¶ 2, Ex. A
12	#9 (Plaintiff alleges Becerra told 13 Plaintiff that the drawing was 14 inappropriate).	B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A
15	#10 (Plaintiff claims Becerra told 16 Plaintiff she was not allowed to draw 17 anymore).	Deposition of Plaintiff B.B. Vol. 2, taken November 6, 2023 (“B.B. Depo Vol. 2”) 51:11-13; Hylton Decl. ¶ 3, Ex. B
19	#11 (Plaintiff further alleges Becerra 20 told Plaintiff to apologize to M.C.).	B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A
21	#12 (Plaintiff claims she apologized 22 M.C., saying “I’m sorry for the 23 drawing” and nothing else).	B.B. Depo Vol. 1, 22:19-23; Hylton Decl. ¶ 2, Ex. A
24	#13 (In all his conversations with Clay, 25 Becerra referred to the drawing as from 26 an innocent child).	Clay Depo 41:17-42:5; Hylton Decl. ¶ 4, Ex. C
27	#14 (Plaintiff alleges she was told by	B.B. Depo Vol. 2, 61:4-6; Hylton Decl.
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1	Ms. Vera and Ms. Mesa that she had to sit out from recess for two weeks).	¶ 3, Ex. B
2	#15 (Plaintiff claims neither Vera nor Mesa told Plaintiff why she had to sit out from recess).	B.B. Depo Vol. 2, 56:17-24; 57:17-23; Hylton Decl. ¶ 3, Ex. B
3	#16 (Neither Vera nor Mesa said anything to Plaintiff about the drawing).	B.B. Depo Vol. 2 55:14-17; 57:8-10; Hylton Decl. ¶ 3, Ex. B
4	#17 (Plaintiff alleges Vera and Mesa said nothing else to Plaintiff about sitting out from recess).	B.B. Depo Vol. 2 61:15-17; Hylton Decl. ¶ 3, Ex. B
5	#18 (Becerra did not tell Plaintiff she had to sit out from recess).	B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B
6	#19 (There was no email documentation of this interaction with Plaintiff and Becerra).	Deposition of Jesus Becerra, taken October 11, 2023 (“Becerra Depo”), 66:19-22; Hylton Decl. ¶ 6, Ex. E
7	#20 (Plaintiff’s missing recess for two weeks was not documented in her discipline file).	Hylton Decl. ¶ 8, Ex. G (CUSD 000275-000276)
8	#21 (Plaintiff continued to draw at school after Mr. Becerra talked to her).	B.B. Depo Vol. 2, 55:1-3; Hylton Decl. ¶ 3, Ex. B
9	#22 (At no time when Plaintiff was at school was Becerra mean to her).	B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B
10	#23 (Plaintiff does not really ever think about the drawing incident).	B.B. Depo Vol. 2 64:12-18; 64:25 – 65:2; Hylton Decl. ¶ 3, Ex. B
11	#24 (Plaintiff never filed a Tort Claim prior to filing her Complaint).	Plaintiff’s Response to District’s Request for Admissions No. 16; Hylton Decl. ¶ 9, Ex. H
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1	#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class).	Deposition of Cleo Victa taken on October 11, 2023 (“Victa Depo”) 18:11-20; Hylton Decl. ¶ 7, Ex. F.
5	#26 (Victa was a counselor at Viejo Elementary during this school year).	Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F
7	#27 (Ms. Victa was concerned that Plaintiff’s brother would leave campus).	Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F
9	#28 (Ms. Victa was concerned for Plaintiff and her brother’s safety because they were not in class).	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F
12	#29 (Ms. Victa was making sure that Plaintiff was safe).	Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F
14	#30 (Ms. Victa only asked Plaintiff “Can you go get your brother? I need to talk to him” prior to Plaintiff going into the bathroom).	B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B
18	#31 (During this interaction, Ms. Victa was being nice to Plaintiff).	B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B
20	#32 (Ms. Victa never spoke with Plaintiff about the drawing).	B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B
22	#33 (Becerra was far away from Plaintiff).	B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B
24	#34 (During this interaction, Mr. Becerra was not moving, he was talking on his walkie talkie).	B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3, Ex. B
27	#35 (After Becerra talked to Plaintiff	B.B. Depo Vol. 2, 51:18-24; Hylton
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1 about the drawing, he never talked to 2 her about the drawing again).	Decl. ¶ 3, Ex. B
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4 Defendants are separately entitled to partial summary judgment for each of
5 the following causes of action and/or claims:

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7 1. Plaintiff's First Cause of Action under 42 U.S.C. § 1983 for "Violation
8 of B.B.'s First Amendment Rights" against Becerra is barred by qualified immunity
9 as Plaintiff has no evidence to support a constitutional violation.

10 **UNCONTROVERTED MATERIAL FACTS**

SUF #/ Undisputed Fact	Evidence
#1 (Plaintiff made a drawing that stated "Black Lives Mater" and "any life").	Deposition of Plaintiff B.B. Vol. 1, taken October 5, 2023 ("B.B. Depo Vol. 1") at Pg. 13:4-6; Declaration of Courtney L. Hylton ("Hylton Decl.") at ¶ 2, Ex. A
#3 (Plaintiff gave the drawing to a classmate, M.C.).	B.B. Depo Vol. 1, 17:15-16; Hylton Decl. ¶ 2, Ex. A
#5 (Cathy Clay informed Becerra about the drawing via email).	Clay Depo 27:17-19; 93:11-14; Hylton Decl. ¶ 4, Ex. C
#6 (Clay's email stated, "My husband and I will not tolerate any more messages given to our daughter at school because of her skin color... As the administrator we trust you know the actions that need to be taken to address the issue.").	Clay Email to Becerra (CUSD 000154), Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.

#8 (Plaintiff told Becerra she drew the drawing).	B.B. Depo Vol. 1, 20:20-25; Hylton Decl. ¶ 2, Ex. A
#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate).	B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A
#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.).	B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A
#18 (Becerra did not tell Plaintiff she had to sit out from recess).	B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B
#22 (At no time when Plaintiff was at school was Becerra mean to her).	B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B

2. Plaintiff's Fifth Cause of Action under 42 U.S.C. § 1983 for "Retaliatory Harassment" against Becerra is barred by qualified immunity as Plaintiff has no evidence to support a constitutional violation.

UNCONTROVERTED MATERIAL FACTS

SUF #/ Undisputed Fact	Evidence
#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.).	B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A
#15 (Plaintiff claims neither Vera nor Mesa told Plaintiff why she had to sit out from recess).	B.B. Depo Vol. 2, 56:17-24; 57:17-23; Hylton Decl. ¶ 3, Ex. B
#16 (Neither Vera nor Mesa said anything to Plaintiff about the drawing).	B.B. Depo Vol. 2 55:14-17; 57:8-10; Hylton Decl. ¶ 3, Ex. B
#18 (Becerra did not tell Plaintiff she had to sit out from recess).	B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B
#20 (Plaintiff's missing recess for two	Hylton Decl. ¶ 8, Ex. G (CUSD

1	weeks was not documented in her	000275-000276)
2	discipline file).	
3	#21 (Plaintiff continued to draw at	B.B. Depo Vol. 2, 55:1-3; Hylton Decl.
4	school after Mr. Becerra talked to her).	¶ 3, Ex. B
5	#25 (On August 23, 2022, Ms. Victa	Deposition of Cleo Victa taken on
6	was asked to come outside by Mr.	October 11, 2023 (“Victa Depo”)
7	Becerra to help with a student who	18:11-20; Hylton Decl. ¶ 7, Ex. F.
8	would not go back to class).	
9	#26 (Victa was a counselor at Viejo	Victa Depo 13:18-20; Hylton Decl. ¶ 7,
10	Elementary during this school year).	Ex. F
11	#27 (Ms. Victa was concerned that	Victa Depo 26:9-11; Hylton Decl. ¶ 7,
12	Plaintiff’s brother would leave campus).	Ex. F
13	#28 (Ms. Victa was concerned for	Victa Depo 34:8-14; Hylton Decl. ¶ 7,
14	Plaintiff and her brother’s safety	Ex. F
15	because they were not in class).	
16	#29 (Ms. Victa was making sure that	Victa Depo 32:24-33:1; Hylton Decl. ¶
17	Plaintiff was safe).	7, Ex. F
18	#30 (Ms. Victa only asked Plaintiff	B.B. Depo Vol. 2, 72:17-25; Hylton
19	“Can you go get your brother? I need to	Decl. ¶ 3, Ex. B
20	talk to him” prior to Plaintiff going into	
21	the bathroom).	
22	#31 (During this interaction, Ms. Victa	B.B. Depo Vol. 2, 74:10-13; Hylton
23	was being nice to Plaintiff).	Decl. ¶ 3, Ex. B
24	#32 (Ms. Victa never spoke with	B.B. Depo Vol. 2, 67:25-68:2; Hylton
25	Plaintiff about the drawing).	Decl. ¶ 3, Ex. B
26	#33 (Becerra was far away from	B.B. Depo Vol. 2, 75:17-19; Hylton
27	Plaintiff).	Decl. ¶ 3, Ex. B

1	#34 (During this interaction, Mr.	B.B. Depo Vol. 2, 75:5-6; 11-16;
2	Becerra was not moving, he was talking	Hylton Decl. ¶ 3, Ex. B
3	on his walkie talkie).	

4	#35 (After Becerra talked to Plaintiff	B.B. Depo Vol. 2, 51:18-24; Hylton
5	about the drawing, he never talked to	Decl. ¶ 3, Ex. B
6	her about the drawing again).	

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8 3. Plaintiff's Fifth Cause of Action under 42 U.S.C. § 1983 for
 9 "Retaliatory Harassment" against Victa is barred by qualified immunity as Plaintiff
 10 has no evidence to support a constitutional violation.

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UNCONTROVERTED MATERIAL FACTS

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SUF #/ Undisputed Fact	Evidence
13 #25 (On August 23, 2022, Ms. Victa 14 was asked to come outside by Mr. 15 Becerra to help with a student who 16 would not go back to class).	Deposition of Cleo Victa taken on October 11, 2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.
17 #26 (Victa was a counselor at Viejo 18 Elementary during this school year).	Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F
19 #27 (Ms. Victa was concerned that 20 Plaintiff's brother would leave campus).	Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F
21 #28 (Ms. Victa was concerned for 22 Plaintiff and her brother's safety 23 because they were not in class).	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F
24 #29 (Ms. Victa was making sure that 25 Plaintiff was safe).	Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F
26 #30 (Ms. Victa only asked Plaintiff 27 "Can you go get your brother? I need to	B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B

1 talk to him" prior to Plaintiff going into	
2 the bathroom).	
3 #31 (During this interaction, Ms. Victa	B.B. Depo Vol. 2, 74:10-13; Hylton
4 was being nice to Plaintiff).	Decl. ¶ 3, Ex. B
5 #32 (Ms. Victa never spoke with	B.B. Depo Vol. 2, 67:25-68:2; Hylton
6 Plaintiff about the drawing).	Decl. ¶ 3, Ex. B

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8 4. Becerra is entitled to qualified immunity as he did not violate a "clearly
9 established" constitutional right.

10 **UNCONTROVERTED MATERIAL FACTS**

SUF #/ Undisputed Fact	Evidence
11 #6 (Clay's email stated, "My husband	Clay Email to Becerra (CUSD 000154),
12 and I will not tolerate any more	Hylton Decl. ¶ 5, Ex. D; Clay Depo,
13 messages given to our daughter at	93:1-14.
14 school because of her skin color... As	
15 the administrator we trust you know the	
16 actions that need to be taken to address	
17 the issue.").	
18 #11 (Plaintiff further alleges Becerra	B.B. Depo Vol. 1, 22:4-7; Hylton Decl.
19 told Plaintiff to apologize to M.C.).	¶ 2, Ex. A
20 #25 (On August 23, 2022, Ms. Victa	Deposition of Cleo Victa taken on
21 was asked to come outside by Mr.	October 11, 2023 ("Victa Depo")
22 Becerra to help with a student who	18:11-20; Hylton Decl. ¶ 7, Ex. F.
23 would not go back to class).	
24 #26 (Victa was a counselor at Viejo	Victa Depo 13:18-20; Hylton Decl. ¶ 7,
25 Elementary during this school year).	Ex. F
26 #27 (Ms. Victa was concerned that	Victa Depo 26:9-11; Hylton Decl. ¶ 7,
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1	Plaintiff's brother would leave campus).	Ex. F
2	#28 (Ms. Victa was concerned for	Victa Depo 34:8-14; Hylton Decl. ¶ 7,
3	Plaintiff and her brother's safety	Ex. F
4	because they were not in class).	
5	#29 (Ms. Victa was making sure that	Victa Depo 32:24-33:1; Hylton Decl. ¶
6	Plaintiff was safe).	7, Ex. F
7	#30 (Ms. Victa only asked Plaintiff	B.B. Depo Vol. 2, 72:17-25; Hylton
8	"Can you go get your brother? I need to	Decl. ¶ 3, Ex. B
9	talk to him" prior to Plaintiff going into	
10	the bathroom).	
11	#31 (During this interaction, Ms. Victa	B.B. Depo Vol. 2, 74:10-13; Hylton
12	was being nice to Plaintiff).	Decl. ¶ 3, Ex. B
13	#32 (Ms. Victa never spoke with	B.B. Depo Vol. 2, 67:25-68:2; Hylton
14	Plaintiff about the drawing).	Decl. ¶ 3, Ex. B
15	#33 (Becerra was far away from	B.B. Depo Vol. 2, 75:17-19; Hylton
16	Plaintiff).	Decl. ¶ 3, Ex. B
17	#34 (During this interaction, Mr.	B.B. Depo Vol. 2, 75:5-6; 11-16;
18	Becerra was not moving, he was talking	Hylton Decl. ¶ 3, Ex. B
19	on his walkie talkie).	

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21 5. Victa is entitled to qualified immunity as she did not violate a "clearly
 22 established" constitutional right.

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UNCONTROVERTED MATERIAL FACTS

24	SUF #/ Undisputed Fact	Evidence
25	#25 (On August 23, 2022, Ms. Victa	Deposition of Cleo Victa taken on
26	was asked to come outside by Mr.	October 11, 2023 ("Victa Depo")
27	Becerra to help with a student who	18:11-20; Hylton Decl. ¶ 7, Ex. F.
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would not go back to class).	
#26 (Victa was a counselor at Viejo Elementary during this school year).	Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F
#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus).	Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F
#28 (Ms. Victa was concerned for Plaintiff and her brother's safety because they were not in class).	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F
#29 (Ms. Victa was making sure that Plaintiff was safe).	Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F
#30 (Ms. Victa only asked Plaintiff "Can you go get your brother? I need to talk to him" prior to Plaintiff going into the bathroom).	B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B
#31 (During this interaction, Ms. Victa was being nice to Plaintiff).	B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B
#32 (Ms. Victa never spoke with Plaintiff about the drawing).	B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B

6. Plaintiff's Third Cause of Action for "Intentional Infliction of Emotional Distress" and Fourth Cause of Action for "Negligent Hiring, Supervision, and/or Retention" fail as a matter of law as Plaintiff did not file a Tort Claim in compliance with the *Government Code*.

UNCONTROVERTED MATERIAL FACTS

SUF #/ Undisputed Fact	Evidence
#24 (Plaintiff never filed a Tort Claim prior to filing her Complaint).	Plaintiff's Response to District's Request for Admissions No. 16; Hylton

Decl. ¶ 9, Ex. H

7. Plaintiff's Third Cause of Action for "Intentional Infliction of Emotional Distress" against Becerra fails to state a claim and is meritless as Plaintiff has no evidence to support her claim.

UNCONTROVERTED MATERIAL FACTS

SUF #/ Undisputed Fact	Evidence
#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate).	B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A
#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.).	B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A
#18 (Becerra did not tell Plaintiff she had to sit out from recess).	B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B
#22 (At no time when Plaintiff was at school was Becerra mean to her).	B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B
#33 (Becerra was far away from Plaintiff).	B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B
#34 (During this interaction, Mr. Becerra was not moving, he was talking on his walkie talkie).	B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3, Ex. B

23 8. Plaintiff's Third Cause of Action for "Intentional Infliction of
24 Emotional Distress" Victa fails to state a claim and is meritless as Plaintiff has no
25 evidence to support her claim.

UNCONTROVERTED MATERIAL FACTS

SUF #/ Undisputed Fact	Evidence
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1	#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class).	Deposition of Cleo Victa taken on October 11, 2023 (“Victa Depo”) 18:11-20; Hylton Decl. ¶ 7, Ex. F.
2	#26 (Victa was a counselor at Viejo Elementary during this school year).	Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F
3	#27 (Ms. Victa was concerned that Plaintiff’s brother would leave campus).	Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F
4	#28 (Ms. Victa was concerned for Plaintiff and her brother’s safety because they were not in class).	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F
5	#29 (Ms. Victa was making sure that Plaintiff was safe).	Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F
6	#30 (Ms. Victa only asked Plaintiff “Can you go get your brother? I need to talk to him” prior to Plaintiff going into the bathroom).	B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B
7	#31 (During this interaction, Ms. Victa was being nice to Plaintiff).	B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B
8	#32 (Ms. Victa never spoke with Plaintiff about the drawing).	B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B

9. Plaintiff's Fourth Cause of Action for "Negligent Hiring, Supervision and/or Retention" against Capistrano Unified School District fails to state a claim and is without merit as no duty was breached.

UNCONTROVERTED MATERIAL FACTS

SUF #/ Undisputed Fact	Evidence
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1	#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate).	B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A
2	#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.).	B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A
3	#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class).	Deposition of Cleo Victa taken on October 11, 2023 (“Victa Depo”) 18:11-20; Hylton Decl. ¶ 7, Ex. F.
4	#26 (Victa was a counselor at Viejo Elementary during this school year).	Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F
5	#27 (Ms. Victa was concerned that Plaintiff’s brother would leave campus).	Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F
6	#28 (Ms. Victa was concerned for Plaintiff and her brother’s safety because they were not in class).	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F
7	#29 (Ms. Victa was making sure that Plaintiff was safe).	Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F
8	#30 (Ms. Victa only asked Plaintiff “Can you go get your brother? I need to talk to him” prior to Plaintiff going into the bathroom).	B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B
9	#31 (During this interaction, Ms. Victa was being nice to Plaintiff).	B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B
10	#32 (Ms. Victa never spoke with Plaintiff about the drawing).	B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B
11	#33 (Becerra was far away from	B.B. Depo Vol. 2, 75:17-19; Hylton
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1 Plaintiff).	Decl. ¶ 3, Ex. B
2 #34 (During this interaction, Mr. 3 Becerra was not moving, he was talking 4 on his walkie talkie).	B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3, Ex. B

DATED: January 12, 2024

HYLTON & ASSOCIATES
A Professional Corporation

By:


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LADAN SHELECHI
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UNIFIED SCHOOL DISTRICT; JESUS
BEERRA; and CLEO VICTA

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Case Name: **B.B., et al. v. Capistrano Unified School Dist., et al.**
Case No.: 8:23-cv-00306-DOC-ADS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18201 Von Karman Avenue, Suite #430, Irvine, CA 92612.

On **January 12, 2024**, I served the foregoing document(s) described as **DEFENDANTS' SEPARATE STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, PARTIAL SUMMARY JUDGMENT** on the interested parties by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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- BY MAIL:** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, I deposited such envelope in the mail at Irvine, California.
- BY FACSIMILE:** I caused all of the pages of the above-entitled document to be sent to the recipient(s) noted via facsimile at the respective telephone numbers indicated above.
- VIA ELECTRONIC MAIL (CM/ECF)** - all parties listed above have been served via electronic mail through the court's CM/ECF system, which automatically generates a Notice of Electronic Filing (NEF) allowing registered e-filers to retrieve the document.
- BY FEDERAL EXPRESS/OVERNIGHT MAIL:** I caused the above-described document to be served on the interested parties noted as follows

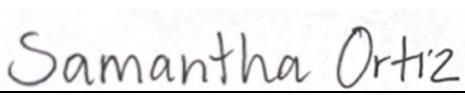
Case Name: ***B.B., et al. v. Capistrano Unified School Dist., et al.***
Case No.: 8:23-cv-00306-DOC-ADS

1 by Federal Express/Overnight Mail.
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□ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by
3 hand to the office(s) of the addressee via messenger.
4

5 I declare that I am employed in the office of a member of the bar of this court
6 at whose direction the service was made.
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8 Executed on **January 12, 2024**, at Irvine, California.
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11 _____
12 **Samantha Ortiz**
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